

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF SECY-78-219 - EXPORT-
IMPORT REGULATIONS PART 110

Place - Washington, D. C.

Date - Thursday, 4 May 1978

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(202) 347-3700

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

DISCUSSION OF SECY-78-219 - EXPORT-
IMPORT REGULATIONS PART 110

Room 1130
1717 H Street, N. W.
Washington, D. C.

Thursday, 4 May 1978

The Commission met, pursuant to notice, at 3:40 p.m.

BEFORE:

DR. JOSEPH M. HENDRIE, Chairman

PETER A. BRADFORD, Commissioner

RICHARD T. KENNEDY, Commissioner

PRESENT:

SAMUEL CHILK, Secretary

J. KELLEY, Acting Legal Counsel

C. STOIBER

J. DEVINE

L. GOSSICK

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P R O C E E D I N G S

(3:40 p.m.)

CHAIRMAN HENDRIE: The next item on the agenda is the export-import regulations, part 1-10. Next we have the

Next we have the export-import regulation, part 1-10, which would reflect the provisions of the recently enacted Nuclear Nonproliferation Act of 1978.

I think that aside from what may be really minor editorial matters, that the only significant points at issue here have to do with the physical security standards, and there is a division in the staff recommendations between NMSS. We want to enumerate a requirement for breadth analysis and also a number of a so-called essential elements in the security program, and the rest of the staff think it is better dealt with by the IAEA publication insert 225.

I think everything else is fairly well agreed to down the line, at least as far as I know.

Now, I will attempt to bring the Commission to a settlement of this matter this afternoon. I will see. A few minutes' worth of discussion down the line. In particular, I don't think we are going to spend an hour on it, and if we hold it over, we will hold it over until 1:30 Monday afternoon, and if we do, we will have to hold a short notice meeting for then.

That would have the advantage that Commissioner Gilinsky will be back in town and will be able to look at the

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1 matter.

2 I've gone ahead and scheduled meetings this week,
3 having talked with Commissioner Gilinsky before he left, and I
4 know what his point of view was, at least as of that time. Of
5 course, if he were here and participated in the discussion, it
6 might very well change his mind, as all of us are certainly
7 privileged to do.

8 Let me start off and ask the staff to speak, to make
9 a summary, on one side or the other for these alternatives,
10 asking you to make the central points and not run on at great
11 length. And we will see, with some Commission discussion,
12 where we stand and where we might go.

13 MR. SHEA: I might just briefly introduce the presen-
14 tation, Mr. Chairman.

15 I would like to ask Mike Guhin to present the factors
16 involved in AWIP and some other offices favorable to it, and
17 Jerry Page will then present on behalf of NMSS the factors.

18 I might note that barring an extraordinary meeting
19 of the Commission tomorrow, probably this is Mike Guhin's last
20 appearance before the Commission.

21 CHAIRMAN HENDRIE: I was going to say, you are
22 working him right up to the end.

23 MR. SHEA: We're getting a hard day's work out of
24 him. And in this particular room it is appropriate since he
25 was one of the founding fathers of it back in 1976. And one

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1 of his first tasks was to work overtime to produce the original
2 rule which became effective, incidentally, yesterday.

3 CHAIRMAN HENDRIE: It has been effective a whole 24
4 hours, and we haven't amended it yet?

5 Well, let's get on with the discussion.

6 MR. GUHIN: As you accurately summarized, I think it
7 is important to note for the benefit of all here that there are
8 several essential points even in the physical security section
9 on which all of the staff agree regarding country visits and
10 the use of insert 225, at least the reference form, and that
11 the disagreements really only focus on whether or not we delin-
12 eate certain standards from insert 225 in the regulations,
13 certain essential ones, and whether or not we delineate a
14 requirement for threat assessment.

15 I think those, essentially, are the only two
16 differences between the alternatives.

17 Before going into the one with you, I would like to
18 explain, Mr. Chairman, if I could, that we have had a situation
19 where the chart which went along with the physical security
20 Appendix C, which is labeled, we discovered this morning does
21 have some of the lower-limit figures wrong, and that is really
22 an editorial change. And the staff does have copies which they
23 can circulate.

24 But in review of it, it was discovered that those
25 should be changed to conform to what the lower limits that are

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1 internationally agreed upon should be in there. And there are
2 some other minor editorial changes in that chart.

3 Essentially, with respect to the question of whether
4 or not the Commission should delineate certain specific measures
5 referred to in 225 in the rule, IP and some other offices have
6 taken the view that the problem with this is that we're dealing
7 with a situation where one cannot say that at this stage, at
8 any rate, that these are really all that one needs in each and
9 every circumstance, and consequently, by building in these,
10 however, we may leave the impression that these are really the
11 only essential elements you need of a program whereby our goal
12 -- of course, the goal in other countries, as is our goal here,
13 is to have an overall program providing for these measures and,
14 of course, a framework for them and a system for them and other
15 measures where they may be warranted or required.

16 So I think that the problem that arises here is one
17 of saying that if by enshrining these particular measures --
18 and, indeed, these are essential measures -- and with due
19 credit to the study group, I would like to say that I think the
20 measures in here are fairly defined, because there was a lot
21 of work by both sides, all offices in this, in designing the
22 set of measures that would go into this alternative 2.

23 However, by enshrining them in the regulations, I
24 think we do leave the impression that this is, indeed, the one
25 and only set that anyone need have, and if that is not our

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1 conviction, if that is the Commission's conviction, then I
2 think one could say, well, that is indeed a bottom line, which
3 would not hurt. However, I think the practicallity shows us
4 in the past in our reviews and in NMSS's reviews that this is
5 not the case. And consequently, I think, to enshrine these
6 when it does not build in certainty, and when we wish to go
7 back for more information with other countries or discussions
8 or encourage them in particular ways, I think it would be mis-
9 leading and would not build in a real predictability or cer-
10 tainty at all into the licensing framework.

11 COMMISSIONER BRADFORD: Let me understand what you
12 are saying.

13 Are you saying that these points are not a uniform
14 bottom line, that in fact in some cases we don't now require
15 at least these items?

16 MR. GUHIN: I think in all that I've seen,
17 essentially, they have required these as a bottom line. I
18 would not want to propose, however, that there are other ways
19 that people can meet this.

20 For example, if the Commission were to decide to go
21 along, I think it would be very important to have something in
22 or their equivalent, because I think countries, in devising
23 their security programs, can come up with something which could
24 be the equivalent without having all of these elements.

25 To return to your question --

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1 COMMISSIONER BRADFORD: Isn't that in the statute
2 now?

3 MR. GUHIN: No, it is not. It is not in the rule
4 now.

5 COMMISSIONER BRADFORD: Not the rule, but the
6 statute.

7 MR. GUHIN: It is in the rule for the criteria
8 themselves. It's not in the rule for the standards which NMSS
9 -- which is to incorporate in the physical security section.

10 COMMISSIONER BRADFORD: Sure, but to meet the
11 criteria in the statute, you have to meet the equivalent of
12 the regulation.

13 MR. GUHIN: I guess one could say that. But it's as
14 you meet the criteria or their equivalent. But if we define in
15 the rules what meeting the criteria means, then I think you
16 have to meet those and not the equivalent, unless there were a
17 bottom line which said "these standards or their equivalent."

18 COMMISSIONER BRADFORD: Well, the statute itself
19 says, "Physical security measures should be deemed adequate if
20 such measures provide a level of protection equivalent to that
21 required by the applicable regulation."

22 CHAIRMAN HENDRIE: Well, once we write a regulation
23 you can either do it that way or you can for court test with
24 the regulation. You've got that freedom, don't you?

25 COMMISSIONER BRADFORD: If the statute says

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1 "equivalent to the regulation," I agree that if the regulation
2 says these things, where they are equivalent, but the statute
3 itself seems to say that, as it is, you don't have to meet the
4 regulations; you just have to meet its equivalent.

5 CHAIRMAN HENDRIE: Are you going to issue a license
6 if the regulation is not met? Is there any chance that you
7 would issue a license?

8 MR. PAGE: The wording we have in here does not make
9 it mandatory. It says it should be included. It is not a
10 requirement. These are essential elements.

11 COMMISSIONER KENNEDY: If it says it should be, I
12 assume that's mandatory.

13 MR. PAGE: Well, exceptions can be made to the
14 rules. There an exception provision in all rules. Anyone can
15 apply for an alternate measure.

16 CHAIRMAN HENDRIE: But that is not the question
17 before the House.

18 Peter is saying, look, the statute says you can
19 either follow the regulations or do the equivalent. What I'm
20 saying is that since they've got to get a license from NRC, if
21 we make regulations, you just aren't going to get a license
22 from NRC by coming in and saying, never mind your regulations;
23 I'm doing the equivalent. You are going to have to obey the
24 regulations within the framework of those regulations.

25 MR. PAGE: That's true, Mr. Chairman, but in the

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1 other regulations, at least, there's a provision that the
2 Commission can grant exceptions to specific provisions of the
3 rule. The wording in here that we have is not the mandatory
4 language, does not say that these programs shall include these
5 elements. It is that they should include these elements.

6 In fact, in reviewing the adequacy of foreign
7 physical security programs thus far these elements have been
8 included in all programs which we have approved.

9 I agree with Mike, there is possibly a program that
10 could be devised where two of these elements might be okay not
11 to include. If you had armed guards around a flat perimeter of
12 fence, we would accept that, but it is rather unlikely that
13 that would be proposed.

14 MR. GUHIN: I agree with that. And the basic
15 question you asked was somewhat different, if I am correct, or
16 it had another aspect to it, and that is, have the ones to date
17 reviewed included this. And I think the answer to that, as
18 Jerry said, is yes. But that hasn't been where the issues have
19 arisen. The issues have arisen over how one defines these,
20 over what kind of alarms, for example, without getting into
21 classified information.

22 So it goes far, far beyond this in terms of NMSS's
23 review of the physical security program, and it can go into
24 other things which are in 225, as well as these essential
25 elements which are in 225. And I think, in view of that, our

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1 view has been that this really doesn't give an accurate picture
2 of where we are or how we are working with this problem, or at
3 least not an accurate -- it isn't even totally accurate to
4 other countries. And I think that this definitely, as I come
5 back to my bottom line, at any rate, I think that if one says
6 that these are the elements and leaves them at that -- and I
7 think one has a case for saying, at least in one way -- and I'm
8 not sure the rules themselves should say these should be
9 included. That's a funny way, in my own mind, for a rule to
10 state something. Either something is included as part of its
11 review or it's not included.

12 MR. SHEA: As it is now, it says, "should include
13 the essential elements."
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1 COMMISSIONER KENNEDY: In any event, for my
2 clarification, if we're going to use these "should" and "shall"
3 in these nuance ways, I would appreciate a glossary so we
4 know how we are using them because I would certainly interpret
5 it, if it says in the regulation that these criteria should
6 be met -- I can't imagine somebody saying, well, I will figure
7 out some other way.

8 MR. KELLEY: If I could just offer a comment which,
9 frankly, is off my head. But I think Commissioner Bradford,
10 reading -- I could make some sense out of that. Congress can
11 pass a statute and the idea is we don't want some agency
12 insisting on every crossed "T" and dotted "I." And we will
13 give them regulation power, but we will also say that they
14 are obliged to consider an application or where an applicant
15 says, I haven't got exactly what you've got, but it is just
16 as good. And as a practical matter, applicants tend not to
17 buck the tide. When you say six guards, they will hire six,
18 but as a legal matter, they could come in and say, I've got
19 five guards and an extra gun, and that's just as good.

20 CHAIRMAN HENDRIE: With that Congressional intent
21 perceived, either directly from the statute or the legislative
22 history, wouldn't we then write a rule which says, now here's
23 what you do, Items 1 through 22, except if you've got alternate
24 ways, we're willing to look at them.

25 MR. KELLEY: I think so.

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1 CHAIRMAN HENDRIE: And then the staff operates
2 within the rules of the Commission. And that's all I was
3 trying to say. When you make a rule, then the Commission staff
4 is expected to operate in it and not to go beyond it and say,
5 well, I've also read the statute and it gives me more flexibility
6 than our own Commission's rule.

7 I could always go into court, an applicant could
8 always go into court and say, look, right here in the statute
9 it says it.

10 MR. GUHIN: I think another important distinction
11 here in terms of the rule, and maybe it's only largely cosmetic,
12 but as we've always kept in mind when dealing with expert
13 matters is that we are not dealing with the domestic output,
14 but we're really working with other countries -- is the whole
15 physical security review system that's been set up and the
16 visit requirements and this kind of thing, is in cooperation
17 with them and it has been very productive. And I think all
18 offices will attest in terms of helping others to develop better
19 programs and improve them.

20 But, again, I think, putting it in the rule, that
21 in this way we have to keep in mind that if we are talking about
22 one thing, how we conduct our own review, which came out, by
23 the way, in the initial meetings of the study group -- it was
24 questioned when the initial drafts and alternatives came out
25 as to why is this kind of detail in here rather than other

gsh 3

1 details? And partial reasons, at any rate, well, is this really
2 what the staff focuses on, although it is not entirely what
3 the staff focuses on, et cetera, and also, it might help
4 provide staff guidance.

5 Well, the confusion of IP, at any rate, was that
6 there are other mechanisms for the Commission in this review
7 and not the rule itself -- by this, what is, I think, only
8 a partial listing.

9 And as we will get into the thread discussion
10 subsequently, but this is really, I don't think can really be
11 complete unless by a political decision that the Commission
12 made a decision that it is complete. And if they did that,
13 I think that there would be a strong case.

14 CHAIRMAN HENDRIE: Can I ask a couple of questions
15 here?

16 The list of items here is that reflected in the 225
17 page, they are taken almost directly from 225. I have a
18 handout I can give you to show you the wording. The wording
19 has been slightly changed but every element is in there. 225
20 contains many, many, many measures, upwards to 100 measures.
21 If we just tie it to a comparability statement on 225, people
22 will not know which of those things we consider important and
23 which ones we don't.

24 The ones we've got listed are the ones we feel are
25 important and under our present review criteria, we do measure

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1 acceptability against them and we do not use other measures
2 to judge against. As Mike has inferred, we have been making
3 the reviews rather than IP. These are, in fact, what we are
4 using.

5 CHAIRMAN HENDRIE: These are the only ones, you say?

6 MR. PAGE: These are the only ones that we would
7 require be met, or that a program element be described which
8 prescribes equivalent protections. But each of these cover
9 a different matter and we feel that they are all very important.
10 It is feasible that someone could propose some measure
11 differently than these which we might accept, but as a practical
12 matter, they have not.

13 CHAIRMAN HENDRIE: Do you expect these are going
14 to continue to be the exclusive list?

15 MR. PAGE: This would be the exclusive list of
16 minimum requirements. But as we have proposed elsewhere,
17 which Mike has not gotten to yet, we believe that it is important
18 for the Commission to consider risks in particular countries
19 and we need to consider the threats there and where the threat
20 in a particular country seems to be high, then we would want
21 to supplement that protection with additional measures.

22 But these are the minimum measures that we would
23 accept in a country.

24 CHAIRMAN HENDRIE: What about the other provisions
25

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1 that are listed in 225 with the same list and the same size
2 type and numbering system and so on?

3 MR. PAGE: Most of these are quite specific. For
4 example, they give requirements for badging of people. It is
5 rather explicit under what conditions badges should be provided.
6 There are specific statements about not allowing vehicles
7 within a protected area.

8 In other words, some of the access controls are spoken
9 to very, very explicitly.

10 We believe that country measures can vary and we
11 do not believe that it is appropriate to require that every
12 measure and information in Circular 225 could be met. We are
13 only concerned with comparability. But these elements that we
14 have listed, we believe are needed to be met. And if you have
15 read them, they are quite liberal.

16 For example, we have not required, for example, that
17 an armed security force be on site. We have simply stated that
18 an armed security force shall be provided, unless there is an
19 off site security force that can arrive in sufficient time to
20 prevent the theft of material.

21 So these criteria cannot be directly compared against
22 our Part 73. We can do the kind of reviews that we expect to
23 do for the alternate one language. We simply felt that this
24 language was more responsive to the Act and would provide better
25 guidance to countries as to what we would be looking at.

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1 CHAIRMAN HENDRIE: Would you be better off with this
2 kind of guidance if it were in there?

3 MR. PAGE: It could be in there, sure.

4 CHAIRMAN HENDRIE: Rather than embedding in the
5 regulations the citing of 225 comparability requirements gives
6 you the base in the Code of Federal Regulations to do what you
7 are required to do.

8 But as in so many places, more detailed guidance,
9 implementation guidance and so on, is often better handled in
10 less formal documents.

11 MR. PAGE: Usually, our guides are based on ways
12 of achieving compliance with specific measures and here we
13 were trying to clearly state the kinds of measures that we
14 believe constitute a comprehensive acceptable program.

15 So without these words, we simply say that a program
16 shall be adequate and be comparable with Information Circular
17 225, without clearly indicating which parts of Information
18 Circular 225 are the important ones and which ones we do not
19 believe need to be followed.

20 But it can be done either way. We simply felt that
21 this was more responsive to our charge.

22 COMMISSIONER KENNEDY: What it says is, it says
23 physical security measures providing as a minimum, protection
24 comparable to that set forth in Circular 225 -- that doesn't
25 imply any specific set of particular measures. It means a

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1 complex of measures which would provide a conglomerous result
2 equal to the result that one would get by applying the rules
3 of Circular 225.

4 Isn't that right?

5 MR. PAGE: Yes, and we believe these nine measures
6 that we have listed constitute the full scope of those things
7 that need to be looked at to make that determination.

8 CHAIRMAN HENDRIE: They really, then, in your view,
9 they do constitute a set under which one can put the statement,
10 these are the essential set of measures which must be
11 considered.

12 MR. PAGE: Yes.

13 CHAIRMAN HENDRIE: A program which excludes all of
14 these measures appropriately implemented will be acceptable.

15 COMMISSIONER KENNEDY: It says each physical security
16 program should include the following essential elements. Each
17 one should include the following essential elements.

18 Now that means to me that without one of them, you
19 could not approve it.

20 MR. PAGE: In a practical sense, we do not see how
21 we could approve one without it, but I will not say that one
22 cannot be drawn up.

23 For example, one could have a wall of guards rather
24 than a fence and a barrier. But thus far, the programs that
25 we have reviewed, these have been the minimum requirements that

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1 we've had in the back of our mind in approving the program.

2 COMMISSIONER BRADFORD: When you say there is this
3 other language in the statute about taking into consideration
4 variations and risk to security, where appropriate, you're
5 talking about these as being minimums.

6 I just wanted to be sure that that was clear.

7 MR. PAGE: There's another provision of our alternative
8 2 where there is specific language in there that says the
9 Commission will take into consideration the relative threats
10 in the country so that we consider the associated risks so
11 that additional measures may be deemed necessary.

12 That is not part of alternative 1. Certain countries
13 have higher terrorist activities than we have in our country.
14 So, therefore, we think the norm should not be used as the
15 basis for judging adequacy there.

16 COMMISSIONER BRADFORD: But you can't bring this
17 country into it, really, anyway, can you, because you are using,
18 what is it, part 73 as a standard, and then you would be above
19 and beyond Circular 225.

20 MR. PAGE: That's true. Let's take Britain or
21 some country where they do not have terrorist activities to
22 the extent that they have in other places of the world. We
23 would want to consider the threat to the nuclear material in
24 looking at the overall approval of the program because there
25 may be additional measures that may be appropriate in one country

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1 that may not be necessary in another. But these nine that we
2 have listed we believe are a minimum element of all programs.

3 MR. STOIBER: Could I point out one aspect of the
4 legislative history, and that is when Congress required the
5 Commission to promulgate its regulations within 60 days, they
6 specifically used the term "levels of physical security" in
7 distinction to the term "measures of physical security,"
8 which were used in the criteria no. 3. And I believe the
9 intention there, and I think there is some legislative history
10 to support that, is that what Congress was really interested
11 in was not descending to great particulars here because they
12 felt that might well tie the Commission's hands in approving
13 a variety of different types of measures. But what they wanted
14 was a general statement of the categories of material and
15 the general levels of protection which would be consistent with
16 Insert 225, Reg 1.

17 I think as a matter of law either of the alternatives
18 that you have before you are proper and either would do the
19 job.

20 I tend to think that Alternative 1 probably more
21 accurately represents the Congressional intention. I can see
22 the desirability of more specificity in the second alternative
23 as guidance, but I can also understand what is perhaps a
24 lawyer's argument, that the expression of one measure may be
25 deemed to imply the exclusion of another measure. I would not

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1 think the Commission would want to leave that impression.

2 Therefore, if Alternative 2 is adopted, I would
3 think that the equivalency provision or concept in the criterion
4 would be a desirable thing to put into the regulations, in
5 addition, so that people were clear that there was the
6 possibility of meeting the measures with equivalent other
7 activity.

8 COMMISSIONER KENNEDY: Is it not also true that the
9 legislative history reflected the general understanding of
10 Congress that physical security is a matter of national jurisdic-
11 tion. It is a sovereign matter. And whereas, just as the
12 IAEA has visualized this, and thus, was looking to a general
13 statement of intent, much as you expressed it, that there
14 were levels rather than specific measures. So that the
15 Commission and this government was being given an opportunity
16 to review a total concept package of physical security
17 measures being undertaken to determine whether in sum, those
18 measures provided a level of physical security adequate to
19 meet our needs.

20 MR. STROIBER: I certainly think there was that
21 element on the part of many of the leading actors in the
22 Congressional consideration. I think also the use of the term
23 "levels" here is significant because I can recall debates in
24 discussions where this provisions on the regulations initially
25 had measures in it, and there was a discussion about whether or

gsh 11 1 not that would be too intrusive and create perceptions that
2 we were trying to dictate to other countries, how they should
3 organize their police forces and other matters.

4 CHAIRMAN HENDRIE: Jerry, if you stop and think
5 about things like the general design criteria, you come to
6 one that says, thou shalt have containment and you say, boy,
7 that's a lot of guidance. What is that? You have regulatory
8 guides, standard review plans. And it has the advantage that
9 it is less than cast in stone and the staff has a certain
10 flexibility where the need arises to readjust that without
11 coming back to the rule-making proceedings.

12 And I must say both the threat analysis, both the
13 list and the threat analysis paragraph would appear to me to
14 be the sort of guidance that you would want to provide probably
15 in Reg. Guide form because that is a pretty well established
16 format for such guidance these days -- to indicate the
17 staff's current view as to how you go about providing necessary
18 information to show that your physical security program provides
19 as a minimum protection comparable to that in 225.

20 And again, on the threat side, to deal with the
21 determinations that may be based on country-wide findings and
22 reexamine the findings in the changed circumstances and so on
23 and so on. And you can say what does that mean? Well, you've
24 got a Reg Guide that says here the sorts of things you want to
25 look at in these lines, and the staff will be thinking about.

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1 MR. PAGE: We clearly agree that we can do what
2 we want to do with either alternative. I don't want to leave
3 the alternative that we are dug in on Alternative 2 at all.

4 MR. GUHIN: If I may clarify one thing. I hate to
5 leave a wrong inference, particularly in my last showing here.
6 But the question, I think, could have been understood that I
7 said oftentimes in our review, we go beyond these. And I think
8 that that is not really entirely accurate and I did not mean
9 to infer that as such.

10 But I think if you look at the proposed standards
11 themselves in Alternative 2, that they are very ambiguous.
12 That what I mean to say is that when you talk about procedures
13 for controlling access, I don't think that there is a country
14 probably in the world that has not had procedures for controlling
15 access. Your review focuses on what kind of procedures and
16 do these procedures accomplish what the goal is or intrusion
17 alarms. Do these alarms really do the job?

18 Those are the kinds of reviews, the things that we
19 have really focused on.

20 MR PAGE: Mr. Chairman, as one last comment, Information
21 Circular 225 did contemplate that the physical protection
22 levels in the country would vary from country to country,
23 depending upon the threat. And this is clearly stated in the
24 opening Section 1.4.

25 So we have the wherewithall to still use the basic

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1 criterion in the document and do the types of things that we
2 feel is necessary.

3 COMMISSIONER KENNEDY: What you're saying there is
4 that in Alternative 1, you would have in regulation the force
5 of law that you would need to have to do what you think is
6 essential.

7 MR. PAGE: Yes.

8 COMMISSIONER KENNEDY: It seems to me in such a case,
9 that argues for leaving it to Alternative 1 because for the
10 very reason that it does provide that measure of flexibility
11 that the Chairman is referring to. And it seems to me that
12 is a very important thing to have.

13 The more specific you get, and specificity is important
14 and desirable in some cases, but not always, the more specific
15 you get, the more important it becomes that you be all-inclusive
16 and you be very precisely meaning.

17 These are neither, I think. They are ideal for
18 the purpose which you use them. That is in the guidance sense.
19 But if you are laying them out as a regulation, it seems to me
20 they begin to take on a force of greater precision than they
21 now show.

22 So I would think that as the Chairman suggests, this
23 is guidance, this is staff guidance as to how it goes about
24 implementing, achieving at least the levels of Circular 225.

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gsh 14, CHAIRMAN HENDRIE: I wanted to have a little quiet,
2 sort of semi-private poll here for a moment. Did you have
3 more questions, Peter?

4 COMMISSIONER BRADFORD: I did have one other question.
5 You said there was 100 and some provisions in the circular?

6 MR. PAGE: I haven't counted them, but there are
7 many, many pages and there are criteria within criteria. So
8 there are many built in. It is maybe 60 or so. There are a lot
9 of them.

10 COMMISSIONER BRADFORD: I just want to understand the
11 logic by which we can say -- say 100 is the right number and
12 we're taking 10 of those which are really important. Are you
13 really able to say that by taking only those, that you are still
14 coming out with a level of protection equivalent to that which
15 Circular 225 would provide?

16 What does that say about the other 90 or 80 or 70?

17 CHAIRMAN HENDRIE: I don't think he imparts it that
18 way, Peter, because that implies that there's 100 and all
19 have a comparable dignity and meaning to the 10 here.

20 COMMISSIONER KENNEDY: Many of them are subsets.

21 COMMISSIONER BRADFORD: All I think it implies is
22 that they have some meaning at all. That is, there must be whole
23 categories of things that you are saying really doesn't matter.

24 MR. PAGE: Well, this document was not written really
25 as a requirements document. It is written as a guide to countries

gsh 15

1 to consider various types of measures that can be used in order
2 to provide the level of protection and thought necessary.

3 COMMISSIONER KENNEDY: They are grouped in subsets,
4 essentially.

5 MR. PAGE: They are, but it is more of a hodge-podge
6 than it is a well thought through criterion, and then subcriterion.
7 It can be done better than it has been done.

8 COMMISSIONER BRADFORD: But, in effect, what I think
9 the judgment must imply is that there are whole subsets and
10 that you don't need, at least for purposes of minimums.

11 MR. PAGE: We believe that all the other measures
12 that are in here will fall under one of the nine that we have
13 listed.

14 COMMISSIONER BRADFORD: Okay. So what you're saying
15 is that the nine will pick up everything in one way or another,
16 pick up everything.

17 MR. PAGE: Yes.

18 CHAIRMAN HENDRIE: That is why I am saying we can't
19 quite parse it as 10 percent. These are set on a different
20 scale. Look, how do you feel about the alternatives? I am
21 leading to the question of whether we should attempt to go forward
22 to a conclusion here or whether we should postpone discussion
23 now over to Monday afternoon? And it depends upon your
24 feelings?

25 COMMISSIONER BRADFORD: It seems to me that if what

gsh 16 1 we're really saying is that these 10 things are minimums,
2 then I should think that they belong in the regulations, or
3 perhaps very firmly worded in the Reg Guide. But I want to
4 take a look at the difference in enforceability.

5 If all they are is guidance, but that is not what I
6 understand the history has been -- Jerry has said that they
7 have been, in fact, enforced in every export that we've done.
8 Then obviously, the language of the Reg Guide and sliding things
9 in and out would be more appropriate.

10 But it seems to me that if we're talking about
11 something that really isn't a minimum, a program that we would
12 intend to approve an export under, that that should be under
13 regulation.

End T. 4

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1 CHAIRMAN HENDRIE: I think it would be best if we
2 hold it over until Monday afternoon. That would allow us
3 some time to contemplate, and we would also have a full
4 Commission present.

5 What I would ask you to do, then, is to join me in
6 voting a short-notice meeting on Monday afternoon.

7 MS. BECKER: I would like to make one point. We
8 won't meet the statutory deadline for publication on these
9 regulations if we put it over until Monday.

10 CHAIRMAN HENDRIE: Those in favor of a short-notice
11 meeting?

12 (A show of three hands.)

13 CHAIRMAN HENDRIE: If you think that is the worst
14 of my problems, Jo Ann, we will have to go out and have a
15 drink and chat. Perhaps we won't be very far behind, at any
16 rate.

17 (Whereupon, at 4:20 p.m., the meeting was adjourned
18 to proceed to other business.)

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